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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

13 CR 735

5 JUAN CARLOS VIDAL-GALICIA,
6 a/k/a, Juan Vidal, a/k/a, Juan
7 Vidal-Galicia, a/k/a Juan
8 Carlos Garcia-Vidal-Galicia,
9 a/k/a Michael Garcia,

Defendant.

10 New York, N.Y.
11 January 9, 2014
12 4:00 p.m.

13 Before:

14 HON. DENISE COTE,

15 District Judge

16 APPEARANCES

17 PREET BHARARA
18 United States Attorney for the
19 Southern District of New York

20 JASON WONG
Assistant United States Attorney

21 LAW OFFICES OF JOSHUA L. DRATEL, P.C.
22 BY: JOSHUA LEWIS DRATEL
Attorneys for Defendant

23 Spanish Language Interpreter: Christina Weisz

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1 THE DEPUTY CLERK: United States v. Juan Carlos
2 Vidal-Galicia.

3 Government ready?

4 MR. WONG: Yes, good afternoon, your Honor, Jason
5 Wong, for the government.

6 THE DEPUTY CLERK: And for defendant, Juan Carlos
7 Vidal-Galicia.

8 MR. DRATEL: Good afternoon, your Honor, Joshua Dratel
9 for Mr. Galicia, seated next to me.

10 THE COURT: Good afternoon, counsel.

11 We are assisted this afternoon by an interpreter who
12 is certified to interpret between Spanish and English.

13 Please place the interpreter under oath.

14 THE DEPUTY CLERK: Please raise your right hand.

15 (Interpreter sworn)

16 THE DEPUTY CLERK: Thank you.

17 THE COURT: Mr. Vidal-Galicia, will you please let me
18 know immediately if you have any difficulty understanding what
19 is being said through the interpreter. Will you please tell me
20 immediately?

21 THE DEFENDANT: Yes.

22 THE COURT: I understand that the defendant intends to
23 enter a plea of guilty; is that right, Mr. Dratel?

24 MR. DRATEL: It is, your Honor.

25 THE COURT: Mr. Vidal-Galicia, please stand.

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1 Before accepting your plea, I'm going to ask you
2 certain questions so I can establish to my satisfaction that
3 you are pleading guilty because you are guilty and not for some
4 other reason. If at any time you have difficulty understanding
5 my questions, or if you wish for a further opportunity to
6 consult with your lawyer, will you let me know?

7 THE DEFENDANT: Yes.

8 THE COURT: Please place the defendant under oath.

9 THE DEPUTY CLERK: Please raise your right hand.

10 (Defendant sworn)

11 THE DEPUTY CLERK: Thank you.

12 THE COURT: You are now under oath. And if you answer
13 any of my questions falsely, you can be prosecuted for perjury;
14 do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: What is your full name?

17 THE DEFENDANT: Juan Carlos Vidal-Galicia.

18 THE COURT: How old are you?

19 THE DEFENDANT: I'm going to turn 37 years old.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: I did not complete the third year of
22 high school.

23 THE COURT: Have you ever been treated or hospitalized
24 for any mental illness?

25 THE DEFENDANT: No.

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1 THE COURT: Are you now, or have you recently been,
2 under the care of a doctor or a psychiatrist?

3 THE DEFENDANT: Do you mean a medical attention for
4 some kind of problem?

5 THE COURT: Yes.

6 THE DEFENDANT: I'm going to have foot surgery.

7 THE COURT: Are you taking any medication, now, for
8 that problem?

9 THE DEFENDANT: Yes, I'm taking pain killers.

10 THE COURT: Have you taken some of those painkillers
11 in the last 24 hours?

12 THE DEFENDANT: I take it every day.

13 THE COURT: And do those painkillers affect your
14 ability to understand what is happening here?

15 THE DEFENDANT: No.

16 THE COURT: Do they affect your ability to consult
17 with your lawyer?

18 THE DEFENDANT: No.

19 THE COURT: Now, in the last 24 hours, have you taken
20 any drugs or medicine or pills, other than those painkillers,
21 for your foot problem?

22 THE DEFENDANT: No, only those.

23 THE COURT: So is your mind clear today?

24 THE DEFENDANT: Sure.

25 THE COURT: Do you understand what is happening here?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do either counsel have any doubt as to the
3 defendant's competence?

4 MR. WONG: I do not, your Honor.

5 MR. DRATEL: No, your Honor.

6 THE COURT: Based on my observations of the defendant,
7 his demeanor, and his responses to my questions, I find he is
8 competent to enter a plea of guilty.

9 Now, Mr. Vidal-Galicia, have you had a sufficient
10 opportunity to discuss your case with your lawyer?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you had enough time to talk with him
13 about the charge to which you will be pleading guilty, and any
14 defenses that you have to that charge, and the consequences to
15 you of entering a plea of guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you satisfied with the representations
18 your attorney has given you?

19 THE DEFENDANT: Sure I am.

20 THE COURT: Now, I'm going to explain certain
21 Constitutional rights that you will be giving up. You will be
22 giving up these rights if you enter a plea of guilty.

23 Under the Constitution and laws of the United States,
24 you are entitled to a speedy and public trial by a jury on the
25 charges contained in the indictment that has been filed against

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1 you; do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: At that trial, you would be presumed to be
4 innocent, and the government would be required to prove you
5 guilty by competent evidence and beyond a reasonable doubt
6 before you could be found guilty. You would not have to prove
7 that you were innocent, and a jury of 12 people would have to
8 agree, unanimously, that you were guilty.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: At that trial, and at every stage of your
12 case, you would be entitled to be represented by a lawyer. And
13 if you could not afford one, one would be appointed to
14 represent you; do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: During the trial, the witnesses for the
17 government would have to come to court and testify in your
18 presence, and your lawyer could cross-examine the witness for
19 the government, object to evidence offered by the government
20 and, if you desired, issue subpoenas, offer evidence, and
21 compel witnesses to come to Court and testify on your behalf.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: At that trial, although you would have the
25 right to testify if you chose to do so, you would also have the

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1 right not to testify. And no inference or suggestion of guilt
2 could be drawn from the fact that you did not testify if that
3 was what you chose to do.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if you were
7 convicted at a trial, that you would have the right to appeal
8 from that verdict; do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Even at this time, right now, even as
11 you're entering this plea, you have the right to change your
12 mind and plead not guilty and go to trial.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If you plead guilty and I accept your
16 plea, you are going to give up your right to a trial and all of
17 the other rights I have just described. There will be no
18 trial. And I'll enter a judgment of guilty and sentence you
19 based on this plea after I read whatever submissions I get from
20 you, and your lawyer, and the government's lawyer. And after I
21 read a presentence report prepared by the probation department.
22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: If you plead guilty, you are also going to
25 give up your right not to incriminate yourself, because I'm

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1 going to ask you today what you did, and you're going to have
2 to describe your conduct to me.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Now, I want to make sure you understand
6 what you are charged with in this indictment. You're charged
7 with entering this country without permission of our
8 government; that is the attorney general or the secretary of
9 the Department of Homeland Security, after you had been removed
10 from this country. It charges that you were removed from this
11 country on or about April 10th, 2009. It charges, further,
12 that you are not a citizen of this country, that you are an
13 alien. And that before your removal, you had been convicted of
14 a crime, specifically a crime that is classified as an
15 aggravated felony. And that after your illegal reentry into
16 this country, you came into the Southern District of New York,
17 which includes Manhattan and the Bronx, among other locations,
18 and that you were found here sometime on or after July 19th,
19 2013.

20 Do you understand that is the charge against you?

21 THE DEFENDANT: Yes.

22 THE COURT: Let me make sure you understand the
23 penalties that apply.

24 This charge carries a maximum term of imprisonment of
25 20 years; a maximum term of supervised release of three years;

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1 a maximum fine of \$250,000, or a requirement to pay a
2 special -- and a requirement that you pay a special assessment
3 of \$100. Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: Supervised release means that you would be
6 subject to monitoring when released from prison. There are
7 terms of supervised release with which you must comply. And if
8 you do not comply with them, you could be returned to prison
9 without a jury trial. You would be given no credit for any
10 time you already spent in prison, and no credit for any time
11 you already spent on post release supervision.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that since you are not a
15 citizen of this country, it will be far easier for the
16 government to deport you after you are convicted for this
17 crime; do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, do you understand that if your
20 attorney or anyone else has attempted to predict to you what
21 your sentence will be, that their prediction could be wrong; do
22 you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: No one, not your lawyer, not the
25 government's lawyer, no one, can give you any assurance of what

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1 your sentence will be, because I'm going to decide your
2 sentence. But I'm not going to do it now, I'm going to wait.
3 I'm going to wait until I got a presentence report prepared by
4 the probation department, do my own independent analysis of
5 what your sentencing guidelines range is, decide whether I
6 should depart up or down from that range, then consider all of
7 the other information that is before me, and the factors set
8 forth in the section of the law we call Section 3553(a), and
9 only then, after that whole process, will I decide what a
10 reasonable sentence is for you.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Even if your sentence is different from
14 what your attorney or anyone else has told you it might be,
15 even if it is different from what is calculated in the written
16 agreement that you have with the government, you're still going
17 to be bound by your plea of guilty and cannot withdraw your
18 plea of guilty; do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Now, has anyone threatened you or anyone
21 else or forced you in any way to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Now, I understand that there is a plea
24 agreement between you and the government. Do you have a copy
25 of it in front of you?

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1 THE DEFENDANT: Yes.

2 THE COURT: Does it have the date, January 2nd, on the
3 first page?

4 THE DEFENDANT: Yes.

5 THE COURT: Does it have six pages in all?

6 THE DEFENDANT: Yes.

7 THE COURT: Is your signature on the last page?

8 THE DEFENDANT: Yes.

9 THE COURT: What's the date next to your signature?

10 THE DEFENDANT: January 9th.

11 THE COURT: That's today. Did you sign this today?

12 THE DEFENDANT: Yes.

13 THE COURT: Before you signed this document, was it
14 translated to you?

15 THE DEFENDANT: Yes. This document was brought to me
16 and read to me.

17 THE COURT: And did you discuss it with your lawyer
18 before you signed it?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that in this document
21 you and the government agree that your sentencing guidelines
22 range is 46 to 57 months in prison?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that by signing this
25 agreement, you have given up your right to appeal or challenge

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1 or litigate your sentence in any way, so long as I don't
2 sentence you to more than 57 months in prison?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, do you have any other agreement with
5 the government about your plea or about your sentence that has
6 been left out of this document?

7 THE DEFENDANT: No.

8 THE COURT: Tell me in your own words what you did
9 that makes you believe you are guilty of the crime of which you
10 are charged?

11 THE DEFENDANT: I entered, illegally, into this
12 country.

13 THE COURT: Let me ask you, were you previously
14 convicted of a crime here?

15 THE DEFENDANT: No, only this crime.

16 THE COURT: I'll have the government make a proffer
17 with respect to the prior conviction.

18 MR. WONG: Yes. The defendant was convicted on or
19 about October 22nd, 1996, in Bronx Supreme Court for robbery in
20 the second degree, in violation of New York penal law
21 Section 160.10 subsection 1, which resulted in a sentence of 27
22 to 54 months imprisonment, which is an aggravated felony.
23 Further, he was also convicted on January 26, 2006 in this
24 district for the illegal reentry, which also is an aggravated
25 felony.

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1 THE COURT: So you have just heard, Mr. Vidal-Galicia,
2 that the government described to you these prior convictions.

3 Did they describe those correctly?

4 THE DEFENDANT: Yes, he did.

5 THE COURT: And were you removed from this country on
6 or about April 10th, 2009?

7 THE DEFENDANT: Yes.

8 THE COURT: And you earlier told me that you illegally
9 reentered this country. Was that after the removal date of
10 April 10, 2009?

11 THE DEFENDANT: I came back into this country four
12 years after I was deported.

13 THE COURT: Thank you. And at some point after you
14 illegally reentered this country, did you come here to New York
15 City?

16 THE DEFENDANT: Yes.

17 THE COURT: And was that Manhattan, or the Bronx.

18 THE DEFENDANT: Bronx.

19 THE COURT: And let me ask the government, is that a
20 sufficient allocution for a plea of guilty in this case?

21 MR. WONG: Your Honor, if the defendant can just
22 confirm that he is a citizen of Mexico.

23 THE COURT: Thank you.

24 Are you a citizen of the United States, Mr.
25 Valencia-Galicia?

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1 THE DEFENDANT: No.

2 THE COURT: Does defense counsel agree that there is a
3 sufficient factual predicate for a plea?

4 MR. DRATEL: Yes, your Honor.

5 THE COURT: Mr. Dratel, do you know of any valid
6 defense that would prevail at trial?

7 MR. DRATEL: No, your Honor.

8 THE COURT: Do you know of any reason I should not
9 accept this plea?

10 MR. DRATEL: No, your Honor.

11 THE COURT: Thank you.

12 So, Mr. Vidal-Galicia, since you acknowledge that you
13 are, in fact, guilty as charged, since I'm satisfied that you
14 know of your rights, including your right to go to trial, and
15 that you are aware of the consequences of your plea, including
16 the sentence that may be imposed, I find that you're
17 voluntarily pleading guilty. I enter a judgment of guilty on
18 the indictment.

19 Now, the probation department is gonna want to
20 interview you in order to prepare a presentence report. If you
21 speak with them, make sure anything you say is truthful. That
22 report is important to me in deciding what sentence to impose.
23 You read it carefully before sentence. If you see any errors,
24 point them out to your attorney. Will you do that?

25 THE DEFENDANT: Yes.

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1 THE COURT: You may be seated.

2 Sentence is set for?

3 THE DEPUTY CLERK: April 11 at 2:00 p.m. Any defense
4 submissions regarding sentence shall be due March 28th, with
5 the government's response due April 4th.

6 THE COURT: And Mr. Dratel, will you cooperate with
7 the probation department so your client can be interviewed in
8 the next two weeks?

9 MR. DRATEL: I will try, your Honor. I'm not going to
10 be here next week, due to a case investigation, but I will try
11 to set it up that following week.

12 THE COURT: Thank you.

13 MR. DRATEL: Obviously, I would want to be present.

14 THE COURT: Thank you.

15 MR. DRATEL: Thank you.

16 THE COURT: Is there anything else we need to do?

17 MR. WONG: Not from the government.

18 MR. DRATEL: No. Thank you, your Honor.

19 THE COURT: Thank you.

20 MR. WONG: Thank you.

21 (Adjourned)